

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Shawn Pritchett,

Petitioner

v.

Jo Gentry, *et. al.*,

Respondents

Case No.: 2:17-cv-01694-JAD-DJA

**Order Denying
Motion to Stay Case and
Granting in part Extension to
File Reply Brief**

[ECF No. 105]

Nevada inmate Shawn Pritchett brings this counseled habeas corpus action under 28 U.S.C. § 2254 to challenge his 2010 Nevada state-court convictions for conspiracy to commit murder, first-degree murder with the use of a deadly weapon, and robbery with the use of a deadly weapon.¹ Pritchett moves to stay this case so that an unrelated case challenging *Brown v. McDaniel*² can be decided by the Nevada Supreme Court.³ Alternatively, Pritchett asks for an extension of time to file his reply to his habeas petition.⁴ I find that a stay is unwarranted under these circumstances but good cause exists to grant Pritchett a modest extension to file his reply.

Background

Following a jury trial, Pritchett was convicted in Nevada's Eighth Judicial District Court (Clark County) of conspiracy to commit murder, first-degree murder with the use of a deadly weapon, and robbery with the use of a deadly weapon.⁵ He was sentenced to, *inter alia*, two

¹ ECF No. 22-8.

² 331 P.3d 867 (Nev. 2014).

³ ECF No. 105.

⁴ *Id.*

⁵ ECF No. 22-8.

1 consecutive life sentences without the possibility of parole.⁶ The Nevada Supreme Court
2 affirmed Pritchett's conviction.⁷

3 Pritchett filed a *pro se* petition for writ of habeas corpus in the state district court
4 followed by a counseled supplemental petition.⁸ Following an evidentiary hearing,⁹ the state
5 district court denied that petition.¹⁰ He appealed the denial of his state habeas petition, and the
6 Nevada Supreme Court affirmed.¹¹

7 On June 16, 2017, this court received a *pro se* federal habeas corpus petition from
8 Pritchett, initiating this action.¹² Counsel was appointed,¹³ and with counsel, Pritchett filed a
9 first,¹⁴ second,¹⁵ and third amended habeas petition.¹⁶ In his third amended petition, Pritchett
10 added a new claim—ground 8—that his trial counsel violated his Sixth Amendment rights by
11 conceding his guilt.¹⁷ I *sua sponte* entered a stay to allow Pritchett to return to state court to
12 exhaust that ground.¹⁸ When those state-court proceedings concluded, I reopened this case and
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15 ⁶ *Id.*

16 ⁷ ECF No. 22-15.

17 ⁸ ECF Nos. 23, 23-2.

18 ⁹ ECF No. 23-7.

19 ¹⁰ ECF No. 23-8.

20 ¹¹ ECF No. 23-12.

21 ¹² ECF No. 7.

22 ¹³ ECF No. 6.

23 ¹⁴ ECF No. 12.

¹⁵ ECF No. 32.

¹⁶ ECF No. 42.

¹⁷ *See* ECF No. 41 at 1.

¹⁸ *Id.*

1 directed respondents to respond to Pritchett's third amended petition.¹⁹ Respondents moved to
2 dismiss Pritchett's third amended petition, but I granted Pritchett's motion to strike that motion
3 and instructed Respondents to file an answer or a new motion to dismiss.²⁰ Respondents filed a
4 new motion to dismiss,²¹ and Pritchett filed a motion to stay to allow him to exhaust four
5 grounds in state court.²² I denied Pritchett's motion for a stay²³ and I granted in part the
6 respondents' motion to dismiss: (1) dismissing ground 8 as time barred, (2) deferring a decision
7 on whether Pritchett can establish cause and prejudice to overcome the procedural default of
8 grounds 1(a) through 1(e), and (3) finding that grounds 2, 4, 6, and parts of 7 were
9 unexhausted.²⁴ Pritchett chose to abandon his unexhausted grounds, I dismissed them,²⁵ and
10 respondents answered the remaining grounds.²⁶ Following a request for an extension, Pritchett's
11 reply was due on January 19, 2024.²⁷ Rather than filing his reply, Pritchett moved for a stay.²⁸
12 Respondents opposed the motion, and Pritchett replied.²⁹

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¹⁹ ECF No. 46.

17 ²⁰ ECF No. 75.

18 ²¹ ECF No. 76.

19 ²² ECF No. 79.

20 ²³ ECF No. 84.

21 ²⁴ ECF No. 93.

22 ²⁵ ECF No. 95.

23 ²⁶ ECF No. 102.

²⁷ ECF No. 104.

²⁸ ECF No. 105.

²⁹ ECF Nos. 107, 108.

Discussion

In moving for a stay, Pritchett explains that the Federal Public Defender is challenging *Brown v. McDaniel*, the Nevada Supreme Court’s decision holding that under Nevada law postconviction counsel’s ineffectiveness is not cause for overcoming a procedural default in non-capital cases, in state court on the basis that *Brown* should be overruled in light of *Shinn v. Ramirez*.³⁰ Pritchett explains that the Nevada Supreme Court is considering the argument en banc in *Coca v. State*, and he requests that this court stay this case pending the outcome of *Coca*.³¹ Pritchett proposes that if *Brown* is overruled, he will have good cause for a stay to return to state court to present claims that have never been before the Nevada state courts.³² Alternatively, Pritchett requests an extension of 90 days to file his reply brief, “in the hopes the Nevada Supreme Court has decided the issue by then.”³³

Because Pritchett does not seek a stay to exhaust claims in a mixed petition, *Rhines v. Weber*³⁴ does not directly govern the present situation. But *Rhines* does not rule out stays in other contexts. The Supreme Court has confirmed that “AEDPA does not deprive district courts of [their] authority” to issue stays, although “it does circumscribe their discretion” such that a stay and abeyance must “be compatible with AEDPA’s purposes.”³⁵

The stay that Pritchett is requesting is indefinite, as there is no way of knowing when the Nevada Supreme Court will decide *Coca*. And a stay would delay the resolution of this case and

³⁰ ECF No. 105 at 2.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ 544 U.S. 269 (2005).

³⁵ *Id.* at 276; *see also Ryan v. Gonzales*, 568 U.S. 57, 73–74 (2013).

1 discourage finality, as there is no indication that the Nevada Supreme Court will overrule *Brown*.
2 So I find that the requested stay is not in the interest of justice and would impair the interests of
3 finality and efficiency served by AEDPA. For these same reasons, I also find that an extension
4 of 90 days to give the Nevada Supreme Court time to decide *Coca* is unwarranted. Instead, I
5 find good cause exists for a 30-day extension.

6 **Conclusion**

7 IT IS THEREFORE ORDERED that Petitioner Shawn Pritchett's motion for a stay [ECF
8 No. 105] is DENIED. Pritchett has until March 25, 2024, to file his reply.

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11 U.S. District Judge Jennifer A. Dorsey
12 Dated: February 22, 2024
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